

Message Text

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ACTION EUR-12

INFO OCT-01 IO-13 ISO-00 AID-05 CEA-01 CIAE-00 COME-00
EB-08 EA-07 FRB-03 INR-07 NEA-10 NSAE-00 USIA-06
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OMB-01 JUSE-00 FTC-01 L-03 STR-04 /092 W
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R 041739Z APR 77
FM USMISSION OECD PARIS
TO SECSTATE WASH DC 6017
INFO ALL OECD CAPITALS
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LIMITED OFFICIAL USE SECTION 01 OF 02 OECD PARIS 09881

PASS: EB FOR BOEKER AND RYAN; TREASURY FOR GRIFFIN

E.O. 11652: N/A
TAGS: EINV, OECD
SUBJECT: COMMITTEE ON INTERNATIONAL INVESTMENT AND
MULTINATIONAL ENTERPRISES (CIME): MEETING MARCH 31 -
APRIL 1; STATEMENT BY U.S. DEL ON BELGIAN NOTE

REF: (A) IME(77)7; (B) OECD PARIS 9746

1. FOLLOWING IS TEXT OF STATEMENT MADE BY U.S. DEL
(SMITH) AT MARCH 31 CIME (PARA 7, REFTEL B) IN RESPONSE
TO BELGIAN PRESENTATION OF ITS NOTE (REFTEL A).

TEXT FOLLOWS

THE UNITED STATES WANTS THE OECD GUIDELINES TO BE MEAN-
INGFUL AND USEFUL, AND IN THAT SPIRIT WELCOMES THE VIEWS
OF THE BELGIAN GOVERNMENT, IN THE CONTEXT OF THE CONSUL-
TATIONS, ON THE KINDS OF ISSUES RAISED ON THE BASIS OF
EXPERIENCE IN BELGIUM.

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WE BELIEVE STRONGLY, HOWEVER, THAT ANY DISCUSSION OF THE
DETAILS OF A SPECIFIC DISPUTE BY THIS COMMITTEE WOULD BE
INAPPROPRIATE AND UNHELPFUL. I NOTE IN THAT REGARD THAT
THE BELGIUM GOVERNMENT RECOGNIZED IN ITS PRESENTATION
THAT THE COMMITTEE CAN NOT DRAW CONCLUSIONS ABOUT THE
BEHAVIOR OF A PARTICULAR COMPANY.

WE ARE CONCERNED THAT THE WAY IN WHICH THE BELGIAN GOVERNMENT'S PRESENTATION DEALT WITH THE DETAILS OF AN INDIVIDUAL CASE AMOUNTS TO AN AIRING OF CHARGES AGAINST AN INDIVIDUAL COMPANY WHICH DESPITE THE DISCLAIMER REGARDING REACHING CONCLUSIONS, COULD HAVE THE EFFECT OF TURNING THE CONSULTATIONS INTO A COMPLAINT PROCEDURE CONTRARY TO THE INTENT OF THE DRAFTERS.

AS NOTED BY OUR CHAIRMAN, IT IS ESSENTIAL THAT WE AVOID ANY APPEARANCE OF USING THE OECD CONSULTATIONS AS A SEMI-JUDICIAL BODY WHICH CONSIDERS THE MERITS OF INDIVIDUAL CASES, WHICH ARE MORE PROPERLY DEALT WITH UNDER THE LAWS AND PRACTICES OF THE COUNTRY CONCERNED. THUS, I WILL MAKE NO COMMENT ON THE ALLEGATIONS THAT HAVE BEEN MADE AGAINST A PARTICULAR COMPANY AND HOPE THAT OTHERS WOULD SHOW SIMILAR RESTRAINT.

THE PARTICULAR CASE MENTIONED IN THE WRITTEN PRESENTATION BY THE BELGIUM GOVERNMENT IS CURRENTLY IN THE COURTS IN BELGIUM AND THE PARTIES CONCERNED ARE ENGAGED IN A SERIES OF MEETINGS AIMED AT FINDING A MUTUALLY SATISFACTORY SOLUTION. WE HAVE BEEN IN TOUCH WITH OFFICIALS OF THE COMPANY INVOLVED AND UNDERSTAND THEY WILL BE IN BELGIUM FOR FURTHER MEETINGS NEXT WEEK. ANY AIRING OF ALLEGATIONS IN CONNECTION WITH THE MEETING OF THIS COMMITTEE COULD ONLY SERVE TO REDUCE THE CHANCES FOR SUCCESS OF THAT PROCESS.

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WE ARE, HOWEVER, PREPARED TO UNDERTAKE AT LEAST A PRELIMINARY CONSIDERATION OF THE ISSUES RAISED IN ANNEX 1 OF THE BELGIAN PAPER, EVEN THOUGH IT HAS ONLY VERY RECENTLY BEEN DISTRIBUTED.

IN THAT REGARD, IT MUST BE CLEAR THAT WE ARE NOT IN A POSITION TO REACH INTERPRETATIONS OF THE GUIDELINES IN THE SENSE THAT A COURT INTERPRETS THE LAW. RATHER, WE CAN SIMPLY NOTE WHAT IT WAS WE HAD IN MIND WHEN WE NEGOTIATED THE LANGUAGE IN QUESTION AND HOW THAT MAY RELATE TO THE KIND OF GENERAL ISSUES NOW BEING RAISED.

PARAGRAPH 7 OF THE INITIAL SECTION OF THE GUIDELINES TOGETHER WITH PARAGRAPH 1 OF THE GENERAL POLICIES SECTION SERVES TO PLACE THE MNE WITHIN THE CONTEXT OF LAW AND PRACTICE IN EACH COUNTRY IN WHICH IT IS ESTABLISHED. THE CHAPEAU ON THE EMPLOYMENT AND INDUSTRIAL RELATIONS

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SECTION EMPHASIZES THIS CONTEXT WITH RESPECT TO THAT
SECTION. THEY ESTABLISH THAT THE GUIDELINES CAN IN NO
WAY OVERRIDE LOCAL LAW AND PRACTICE.

THE MEANING OF PARAGRAPH 8 OF THE OPENING SECTION OF THE
GUIDELINES IS LESS PRECISE, WHETHER VIEWED IN CONNECTION
WITH PARAGRAPH 6 OF EMPLOYMENT AND INDUSTRIAL RELATIONS
OR OTHERWISE. WHETHER AND TO WHAT EXTENT VARIOUS ENTI-
TIES OF AN MNE BEAR RESPONSIBILITIES DEPENDS ON THE
NATURE OF THEIR RELATIONSHIPS AND THE NATURE OF THE
ACTUAL SITUATION INVOLVED. IT IS CLEAR THAT THE NEGOTI-
ATORS OF THE GUIDELINES DID NOT HAVE IN MIND A GENERAL
PROPOSITION THAT PARENT COMPANIES ARE RESPONSIBLE FOR
THE FINANCIAL OBLIGATIONS OF THEIR SUBSIDIARIES IN THE
EVENT OF THEIR CLOSURE.

THE LEGAL SITUATION IN SUCH CASES ARE ALMOST INEVITABLY
COMPLEX, INVOLVING AN INTERPLAY AMONG VARIOUS LAWS;
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E.G., LABOR LAW ON SEVERANCE PAY, CORPORATION LAW INVOLVING THE LEGAL RESPONSIBILITIES OF INDIVIDUAL CORPORATE ENTITIES. ONLY COURTS OF LAW CAN ADJUDGE THIS SET OF ISSUES.

THE QUESTION OF THE TREATMENT OF DOMESTIC COMPANIES AND THEIR DOMESTIC SUBSIDIARIES UNDER COMPARABLE CIRCUMSTANCES IS ALSO A RELEVANT ISSUE SINCE THE GUIDELINES PROVIDE, IN PARAGRAPH 9 OF THE INITIAL SECTION, THAT THE TREATMENT OF MNE'S SHOULD NOT BE DISCRIMINATORY.

IT IS DIFFICULT TO ADDRESS QUESTIONS OF EQUITY AND MORALITY OUTSIDE THIS LEGAL FRAMEWORK. SURELY NOTHING IN THE GUIDELINES CAN BE READ AS RECOMMENDING ACTIONS CONTRARY TO LAW. ON THE OTHER HAND, WHEN DEALING WITH EXTRA-LEGAL PAYMENTS, THE EQUITIES ARE OFTEN UNCLEAR, AND WHAT BENEFITS ONE PARTY MAY INJURE ANOTHER.

FINALLY, WHILE WE FULLY ENDORSE THE CONCEPT OF COOPERATION AMONG MEMBER COUNTRIES ON INVESTMENT AND MULTINATIONAL ENTERPRISE ISSUES, WE BELIEVE THAT THE REFERENCE TO DEVISING MEANS TO "COMPEL" COMPLIANCE CONTAINED IN THE LAST PARAGRAPH OF ANNEX I OF THE BELGIAN PAPER, IF IT REFERS TO COMPLIANCE WITH THE GUIDELINES, IS NOT CONSISTENT WITH THE FUNDAMENTAL CONCEPT OF VOLUNTARY GUIDELINES.

THESE ARE THE INITIAL REACTIONS I WOULD HAVE TO THE GENERAL ISSUES RAISED BY THE GOVERNMENT OF BELGIUM.
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